

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6609

PETITION OF AMBER ZAINO AND THOMAS JAGER

OPINION OF THE BOARD

(Opinion Adopted April 10, 2019)
(Effective Date of Opinion: April 17, 2019)

Case No. A-6609 is an application for a four (4) foot variance necessary for the proposed enclosure of a covered porch and stairwell within twenty-one (21) feet of the front lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 10, 2019. Petitioner Thomas Jager appeared at the hearing in support of the application, assisted by Jerry Harmon, Director of Design with Starcom Design/Build.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 3, Block 4, Pinecrest Subdivision, located at 6416 5th Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone. It is a 42.84-foot wide by 150-foot deep rectangular lot, with an area of 6,427 square feet. The subject property was recorded in 1912. See Exhibit 3.
2. The Petitioners' Justification Statement ("Statement") indicates that the house on the subject property was built in 1925, and is a 1,050 square foot, one-story home with a basement. It is set back approximately 29 feet from the front lot line. It contains a covered front porch, which is set back approximately 21 feet from the front lot line, and an existing exterior stairwell to the basement that runs along the left side of the house. The left side of the house is located approximately two (2) feet from the left side lot line, and is nonconforming. See Exhibit 3.
3. The Petitioners are proposing to enclose a portion of the existing front porch and the exterior stairwell in order to provide access to the basement from the first floor

of the house. At present, there is no way to access the basement, which houses the laundry facilities and utilities, from the interior of the house. The proposed enclosure of a portion of the front porch and stairwell “will not expand on the existing footprint of the home” and “is the only reasonable way of creating safe access to the basement.” The Statement details the reasons that access to the basement from other areas of the existing first floor of this home are unworkable, and states that “[t]he front wall of the Proposed Enclosure is 12.8’ wide at the point of front setback encroachment – this is the minimum necessary to enclose the exterior stairwell and incorporate the existing front door to allow for interior access between floors.” See Exhibit 3.

4. The Petitioners purchased the subject property in 2015. The proposed addition is designed in a Sears bungalow style. The Petitioners’ Statement indicates that the owners of adjacent and confronting properties have reviewed their architectural plans. The Petitioners include supporting statements from the owners of the abutting property to the left (i.e. the side where the stairs are located) and the confronting property. See Exhibit 3, Attachment E.
5. At the hearing, Mr. Harmon testified that the only stairwell to the basement of this home is an exterior stairwell, and that in his experience, he has never seen this. He testified that the existing open porch conforms with the requirements of the Zoning Ordinance. He testified that the enclosure of a portion of the porch and existing stairwell will involve no expansion to the footprint of the house, but will entail a small new section of roof.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioners’ agent and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the house on this property dates to 1925, before the enactment of the County’s first Zoning Ordinance, and does not conform to the required side lot line setback, making it a legal nonconforming structure. The Board further finds that the Petitioners are proposing to enclose a portion of an existing covered front porch and the stairway to the home’s basement. Thus the Board finds that the proposed development uses an existing legal nonconforming structure, and satisfies this element of the variance test. See Exhibits 3 and 4(b).

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property in 2015, and therefore the Board finds that they did not construct or have control over the placement of the existing house, which occurred in the 1920s. See Exhibit 3. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioners.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is minimal in that it does not increase the footprint of the existing home, but rather allows for the enclosure of existing stairs and a portion of an existing covered porch, both needed to allow access to the basement of this home from the interior of the house. The Board notes that the Petitioners' Statement states that there is currently no access to the basement, where the laundry facilities and utilities are located, from the interior of this house, and explains why enclosing the existing (exterior) stairway is the only reasonable solution. See Exhibit 3. Thus the Board finds that the requested variance is the minimum needed to allow construction on this property needed to allow reasonable access to the entirety of the house, and thus to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the enclosure of this porch and stairwell continues the residential use of the home, and is consistent with the Takoma Park Master Plan, which seeks, among other things, "to support stable residential neighborhoods."

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that allowing the proposed enclosure of a portion of this front porch and of the existing exterior stairs will not infringe on the use and enjoyment of abutting or confronting properties, as indicated by the Statement (Exhibit 3) and confirmed by the statements included at Exhibit 3, Attachment E.

Accordingly, the requested variance to allow the proposed enclosure of a covered porch and stairs is **granted**, subject to the following condition:

1. The Petitioners shall be bound by all of the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting this variance.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, Vice Chair, seconded by Jon W. Cook, with John H. Pentecost, Chair, Bruce Goldensohn, and Katherine Freeman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 17th day of April, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.